

## MESSAGE FROM THE GOVERNOR.

The following message was received from His Excellency, the Governor, laid before the House and read:

EXECUTIVE OFFICE,  
Austin, March 28, 1891.

To the Texas House of Representatives:

Herewith I return to your honorable body House bill No. 15, entitled "An act to incorporate the city of Austin, and to grant it a new charter, and to extend its boundaries," which reached the executive office on the nineteenth day of this month.

I feel it my duty to disapprove the bill, and most courteously shall assign my reasons therefor:

Two objects are embraced in the act: One to incorporate the city of Austin, the other to validate water works bonds heretofore issued by the city council. To carry out the first, the municipal government is perpetuated with extended powers. To control and manage the latter, a "board of water and light commissioners" is created.

At present the corporate boundaries of Austin embrace four square miles. Under the proposed charter it would include not less than four times that amount of territory. Indeed, it is a difficult task, by any method of calculation, to determine the full extent of its proposed limits. Beginning with an irregular circuit, devoid of all symmetry in shape and apparent fairness in lines, the new boundaries embrace most of the lands in all directions for about two miles from the center of the city. On reaching the Colorado river, over two miles above, at the dam, the city lines are made to extend, with the river's meanders, ten varas from the margin of the high water mark on each side, as far as the backwater covered by the dam will recede, which, according to the report of the engineer filed with the city council, will be about thirty or thirty-five miles from the dam site. However, the backwater will perhaps not extend over twenty-five miles except in rainy seasons. Within and over all this territory the city government is vested with police and taxing powers to be controlled and represented by two separate bodies having but few interdependent relations. The first is the city council, endowed with all the ordinary and many extraordinary functions of municipal government. The other is a body of men known as "The Board of Water and Light Commis-

sioners" to which is delegated many unusual and peculiar powers mainly with the view to the protection, support and maintenance of the Water and Light Works of the city. The council is given the right to appoint a board of equalization whose valuation of property within the city is made final. It can levy \$2.50 taxes on the \$100 worth of values as fixed by the equalization board, and the city can foreclose a lien on the property to collect the taxes due, and one hundred per cent thereon as penalties when the taxpayer shall be in default. It gives the city council the discretion to determine for what purposes the city may acquire and hold property and erect buildings thereon within and beyond the corporate limits, so that taxes may be levied to pay for property anywhere in the State. Among the defined offenses, the act makes it a misdemeanor, subject to prosecution and conviction, for any person "to throw or place, or cause to be thrown or placed in the Colorado river or any of its branches, any such substance (any carcass or dead animal or person or any deleterious or filthy substance whatever) above the city dam." Under this it is possible for people in counties five hundred miles up the river above the dam to commit offenses against the ordinances of Austin by throwing "deleterious or filthy substance" in the river or its branches. The council is given the right also "to define what shall be a nuisance in the city and within three thousand feet of the corporate lines, and to punish the authors thereof by fines, penalties and imprisonment." In this way people twenty-five miles up the river may at any time be called before the city recorder on a charge of permitting stock to run at large, or for indulging in any business or domestic privilege within 3030 feet of the high water mark, and subjected to fines and imprisonment therefor.

The act is a very long one, containing 157 sections. There are but few powers known to the extravagant demands of modern municipalities that have failed to find their way into this charter. At this time I shall not enter into a full discussion of the policy of making such extraordinary grants to any city government. It is perhaps unnecessary. A municipal corporation is intended as an agent of the state, to adapt local government to the wants and necessities of a limited locality inhabited by the people within its

boundaries. It is one of the convenient methods by which good government is intended to be maintained in the interest of the masses. When such purposes fail, necessities for municipal government cease to exist.

The constitution provides that the taxes in cities having over ten thousand inhabitants shall not exceed in any one year two and a half per cent of the taxable property therein. This is a limitation upon the legislative power in authorizing taxes to be levied by city governments. This charter delegates to the city council the right to levy taxes up to the full constitutional limit. That it will do so there is not the least doubt. It seems to be the rule with such governments to lay on taxes as long as the law will permit. For the support of the state government, including the public free schools, there cannot be levied, under the constitution, more than 55 cents on the \$100 worth of property. With 32 1-2 cents she manages to support all of her various public institutions, schools and machinery of government, and yet, now and then, to have a cash balance left. The property within the city has this tax to pay, and also a county tax of 50 cents on the \$100 valuation, which, added together, become very insignificant compared with the \$2.50 on the \$100 worth of property authorized to be levied by the city council under the charter. The aggregate taxes, therefore, threatened to be levied upon the property within the limits of Austin amounts to a good net interest in some states on cash capital. To say the least, I believe such policy is a bad one that will lead to the distress of the people who shall have such high taxes to pay. Such matters, however, are mainly left with the legislature and I perhaps would not feel called on to exercise the veto power if that were the only wrong apparent in the act under consideration. I simply call your attention to this that your better judgment may be exercised in the protection of the public against what appears to be the extravagance of the times. There is no power that should be more delicately exercised than the one authorizing the government to lay taxes upon the people. They can never be justly levied except to raise revenue to pay the expenses of governments economically administered. When any particular part of the government asks for and proposes to collect two and a half dollars on the one hundred dollars of the property

within its limits, it is clearly apparent to me that it does not intend to practice economy, but to indulge in extravagance. With this extraordinary taxing power vested in the city council, at the same time possessing the authority to appoint a board of equalization whose assessments of property values shall be final, I cannot see any escape if that power shall be exercised apace with the spirit of the times, except ultimate bankruptcy and ruin of the people who have the taxes to pay.

After granting all the extraordinary powers that any government could crave, the act proceeds to validate one million four hundred thousand dollars of "water works and electric light bonds, authorized under a bond election held in the city of Austin on the 5th day of May, 1890," and declares them to be valid obligations upon the city of Austin. Why does the legislature wish to validate such a large debt? Was it invalid? If so, upon what ground? Perhaps that matter ought to be settled by the courts. If the municipal officers assumed to issue those bonds under the power of taxation under such circumstances as did not constitutionally justify the exercise of that power, the legislative act validating the bonds could not make them valid. There are purposes for which a city cannot issue such bonds, even with legislative consent; and when they are so issued, the legislature has no power to validate them. As to whether these bonds were valid or not, I have no means of ascertaining, and it is possible the legislature is not more favorably situated with reference to them than myself. As a rule, validating acts are mischievous, and I cannot understand any special reason for the legislative attempt to fix such an enormous debt upon the people of the Capital city, even though they should all request it. It seems that these bonds were issued for the purpose of erecting a dam across the Colorado river, ostensibly to supply the city with water and light for public and private use. No doubt it is a commendable enterprise, but it should be kept within legitimate bounds. If the bonds are valid, no one can complain. If otherwise it would be wrong for the legislature to embarrass the people by trying to make them so.

The act under consideration vests all the franchises and property, real, personal and mixed, and all moneys and funds held by the city for the pur-

pose of constructing and operating a system of waterworks, in "The Board of Water and Light Commissioners," and gives that board the power to take and hold, by purchase or otherwise, such other franchises, funds, money and property, within or beyond the limits of the city, as may be needful or convenient for carrying out the intents and purposes of the act; to sell, convey or lease the same for the city; to make contracts and prescribe regulations for the protection of the rights of property; to act and sue in the name of the city and to use the seal of the city, and to appoint and employ a superintendent, clerks, collectors, assessors, assistant engineers and such other persons, as in its opinion, may be necessary to enable the commissioners to perform their duties in the premises; to prescribe their term of service and duties, and to fix the compensation to be paid all of said officers. In such respects the board's powers are unlimited. In many other particulars it is endowed with extraordinary discretionary powers unusual in the history of this state. If this board is permitted to stand in the full exercise of its powers, the city of Austin may expect, under her double form of government to become burdened with officers and expenses beyond endurance.

In effect, the validation of the bonds and the creation of the board seem to be the most important features in the charter. The extension of the city limits to take in all the outlying property for several miles around, of course becomes necessary when such a debt is fixed upon the city.

The management of the system of water-works is placed exclusively in the power of this board of water and light commissioners, and it is required to manage and control the revenues arising therefrom.

After all, the validity of the whole charter must stand upon the authority of that board. The act provides that the persons now composing the board of public works of the city of Austin, when it takes effect, shall constitute the board of water and light commissioners, and that they shall continue in office as such until the first Monday in December, 1893, at which time six commissioners shall be elected, who shall hold their office for three years and until their successors are elected and qualified. The legislature has no power to create such offices and make the official terms that long; for the

constitution provides "That the duration of all offices not fixed by the constitution shall never exceed two years. (See article 16, section 80.)

All officers under the state, county and municipal governments, except judges and senators, are restricted in their terms by this provision of the constitution. Nowhere is such a board as the one referred to recognized except in this special act. The authority for the act is found in article 11, section 5 of the constitution, and the duration of the offices of "the Board of Water and Light commissioners" is not fixed in it or by any other provision of the constitution.

No authority is provided by the act for the election of the commissioners at any other time than every three years, and their power to act at all under the circumstances is unauthorized as being in conflict with the express provisions of the organic law.

For this reason mainly, and for others that appear in the discussion herein of the dangerous policy of vesting any municipal government with such extraordinary powers as proposed for the city of Austin, I beg to express the hope that your honorable body will agree with me that this law ought not to be passed.

Respectfully, J. S. Hogg,  
Governor of Texas.